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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/071,894 02/08/2002 Michael C. Lorenz 0399.2026-001 8700

21005 7590 03/23/2004

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EXAMINER

SHAHNAN SHAH, KHATOL S

ART UNIT PAPER NUMBER

1645

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/071,894

Applicant(s)

LORENZ ET AL.

Examiner

Khatol S Shahnan-Shah

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 2,5, 10, 24-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-9 and 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-42 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/10/03 &amp; 1/27/03</u> . | 6) <input type="checkbox"/> Other: _____  |

***DETAILED ACTION***

***Election/Restrictions***

1. Applicants' election with out traverse of January 12, 2004, is acknowledged.

Applicants elected Group I claims 1-25 which are drawn to a method of identifying a drug that inhibits an enzyme in a microorganism. For the election of species applicants elected yeast as the microorganism and isocitrate lyase. Claims readable on the elected species are 1, 3, 4, 6, 9 and 11-23. Claims 2, 5, 10 and 24-42 are withdrawn for further consideration as being drawn to non elected inventions.

2. Currently claims 1-42 are pending.
3. Claims 1, 3, 4, 6, 9 and 11-23 are under consideration.

***Information Disclosure Statement***

4. Applicants' Information Disclosure Statements of January 12 and 27, 2003, are acknowledged. The references have been considered by the examiner, see attached PTO1449.

***Drawings***

5. This application, filed under former 37 CFR 1.60, lacks formal drawings. The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings. In unusual circumstances, the formal drawings from the abandoned parent application may be transferred by the grant of a petition under 37 CFR 1.182.

***Specification***

6. The disclosure is objected to because of the following informalities:

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Page 1 of the specification includes a certificate of mailing stamp. This certificate of mailing stamp cannot be part of the disclosure.

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code (see pages 10 and 16). Applicants are required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Appropriate corrections are required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4, 6-9 and 11-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Sacchettini et al. (US 2003/0018166 A1 or WO 02/33118 A2).

The claims are drawn to a method of identifying a drug that inhibits an enzyme involved in the glyoxylate cycle of a microorganism.

Sacchettini et al. teach a method of identifying a drug that inhibits an enzyme involved in the glyoxylate cycle of a microorganism (see abstracts).

Sacchettini et al. teach glyoxylate pathway in *Candida albicans* and *Sacchromyces cerevisiae* (see example 4, page 22). Sacchettini et al. teach the enzymes isocitrate lyase and malate synthase (see page 23 paragraph 0272 and claims 17-18, 41), two carbon

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compounds (see page 23 paragraph 0270). Sacchettini et al. teach inhibition of virulence and infectivity assay (see page 23 paragraph 0274). The prior art teaches the claimed invention.

***Conclusion***

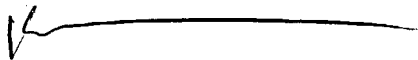
8. No claims are allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol S Shahnan-Shah whose telephone number is (571)-272-0863. The examiner can normally be reached on 7:30am-4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith can be reached on (571)-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.


Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner

Art Unit 1645  
March 19, 2004



RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER